

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1403 of 1988

Date of Decision: 23-06-2005

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NAVINKUMAR @ NAGARBHAI RAGHABHAI - Petitioner(s)

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION –
Respondent(s)

(for full cause title, see next sheet)

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Coram:

The Hon'ble Mr. Justice Bhawani Singh, Chief Justice

The Hon'ble Mr. Justice H.K. Rathod, Judge

Whether approved for reporting?

For the Appellant(s):

MR UDAY R BHATT, Adv.

For the Respondent(s):

MS MAYABEN DESAI FOR MR MD PANDYA, Adv.

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PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

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Whether reporters of Local Papers may be allowed to see the Judgment?

1. This Appeal is directed against the judgment of Motor Accident Claims Tribunal (Main), Ahmedabad (Rural), MACP No.383 of 1986, dated 27.6.1988.
2. Briefly stated, accident took place on 8.2.1985 around 12:00 noon near the gate of S.T.Bus stand, Dhandhuka. The offending vehicle is S.T.bus bearing registration No.GRR-8659. The victim of the accident is Manjulaben, wife of the claimant. She was hit by the door of the of the bus which was flung open when the bus entered into the bus stand heavily loaded with passengers. She was removed to V.S.Hospital, Ahmedabad, but before she could be given any treatment, she died. Therefore, it is alleged that she died due to the rash and negligent driving of the bus by its driver. Deceased was HSC pass, doing nursing course at SSG Hospital, Vadodara in second year and after completion of three year course, she was to get job in the time-scale of Rs.380-12-440-EB-12-500-15-560 per month, monthly emoluments, in all Rs.1250/- to Rs.1600/- per month. At the time of accident, deceased was getting Rs.250/- by way of stipend. Accordingly, claim of Rs.1,50,000/- is made.

Claim is resisted by opponents. Taking place of accident on account of rash and negligent driving on the part of bus driver is denied. Bus was driven at moderate speed, signaled by the conductor, victim was seen fell down after the bus was stopped, it came out that the victim wanted to board the bus while in motion. She failed to catch the handle of the bus and fell down, sustained injuries falling on the road with stones.

3. On hearing parties, issues were framed, evidence sought. Finding recorded is that accident took place as alleged. Consequently, compensation of Rs.21,400/- was awarded carrying interest at the rate of 12% p.a. from the date of application till payment. Through this appeal, quantum of compensation is challenged, enhancement thereof is sought by the claimant.

4. Matter perused. From the evidence, rash and negligent driving on the part of bus driver is clearly established. Deceased was 25 year old at the time of accident. She was SSC passed doing nursing course in the second year. After completion of three year course, she

could secure job of nurse in the time-scale with good future chances of promotion. On the date of accident, she was getting Rs.250/- per month by way of stipend. With this background, assessment of compensation by the Claims Tribunal is not justified. She was not only a house-wife but also doing nursing course in which she could employ herself and earn more since there is great demand of nurses within and out of India. Therefore, it is desirable to assess the income atleast minimum, taking her to be a non earning person. Therefore, making deduction of 1/3rd towards personal expenditures and course expenditures, in addition to Rs.250/- she was receiving by way of stipend, remaining amount of Rs.10,000/- can be multiplied by multiplier of 17. Thus, the amount works out to Rs.2,05,500/- (Rs.10000x17 = Rs.170000 + Rs.10000 (loss of expectancy of life) + Rs.10000 (solatium) + Rs.2500 (loss to the estate) + Rs.3000 (funeral expenses) + Rs.10000 (pain, shock and suffering). [See: *Birendra Sharma and others v. A.U.M. Parcel Service and another* – 2005 ACJ 1126].

Ms. Mayaben Desai, learned counsel for the Insurance Company, submits that total compensation of

Rs.1,50,000/- is claimed, therefore, more than this may not be allowed. Court is required to assess just compensation, therefore, irrespective of the claim, just compensation comes to Rs.2,05,500/-. Contention to the contrary is therefore rejected.

5. Therefore, appeal is allowed, award is modified, claimant is held entitled to compensation of Rs.2,05,500/-, to be paid within two months along with interest at the rate of 8% p.a. on the enhanced amount from the date of application till payment. Cost of this court on parties.

(Bhawani Singh)
Chief Justice

(H.K.Rathod)
Judge

(sunil)